

Adopted	Rejected
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COMMITTEE REPORT

YES: 10

NO: 0

MR. SPEAKER:

*Your Committee on Financial Institutions, to which was referred Senate Bill 564, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 32-29-1-12 IS ADDED TO THE INDIANA
- 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) As used in this section,
- 6 "agent" means a title insurance agent or a title insurance
- 7 underwriter.
- 8 (b) As used in this section, "banking day" means a day on which
- 9 the federal reserve bank is open to the public for carrying on
- 10 substantially all of the functions of the federal reserve bank.
- 11 (c) As used in this section, "check" means a negotiable
- 12 instrument that is drawn on or payable through an insured:
- 13 (1) bank;
- 14 (2) savings and loan association;
- 15 (3) credit union; or
- 16 (4) savings bank;

1 **and contains an unconditional order to pay on demand a specified**
2 **sum of money.**

3 **(d) As used in this section, "escrow account" means a checking**
4 **account established by an agent with an insured:**

- 5 **(1) bank;**
- 6 **(2) savings and loan association;**
- 7 **(3) credit union; or**
- 8 **(4) savings bank;**

9 **that is used exclusively for the deposit and disbursement of funds**
10 **for an escrow transaction.**

11 **(e) As used in this section, "escrow transaction" means a**
12 **transaction in which a person deposits with an agent funds that are**
13 **to be held until:**

- 14 **(1) a specified event occurs; or**
- 15 **(2) the performance of a prescribed condition.**

16 **(f) Funds received for an escrow transaction must be deposited**
17 **in an escrow account unless the parties to the escrow transaction**
18 **agree in writing to another arrangement.**

19 **(g) An agent may not make a disbursement from an escrow**
20 **account unless the following conditions are met:**

21 **(1) The cash, funds, money orders, checks, or negotiable**
22 **instruments necessary for the disbursement have been:**

- 23 **(A) transferred electronically to or deposited into the**
24 **escrow account of the agent and are available for**
25 **withdrawal and disbursement; or**
- 26 **(B) physically received by the agent before disbursement**
27 **and are intended for deposit not later than the next**
28 **banking day after the date of disbursement.**

29 **(2) The transfers or deposits described in subdivision (1) may**
30 **be any of the following:**

- 31 **(A) Cash or electronically transferred funds.**
- 32 **(B) Certified checks, cashier's checks, checks, or money**
33 **orders that are drawn on an existing account at a federally**
34 **insured bank, savings and loan association, credit union, or**
35 **savings bank.**
- 36 **(C) A check issued by the United States or the state of**
37 **Indiana, or by an agency, an instrumentality, or a political**
38 **subdivision of the United States or the state of Indiana.**

(D) A check drawn on the escrow account of a title insurance company or title insurance agency, if the agent has reasonable and prudent cause to believe that sufficient funds are available for withdrawal in the account on which the check is drawn at the time of disbursement.

(E) A personal check in a amount not to exceed one thousand dollars (\$1,000).

(h) An agent is not prohibited from advancing an amount not to exceed one thousand dollars (\$1,000) from an escrow account on behalf of a party to an escrow transaction for the purpose of paying incidental fees, including conveyance and recording fees. Incidental fees may be paid in order to:

- (1) effect and close the sale of;**
- (2) purchase;**
- (3) exchange;**
- (4) transfer;**
- (5) encumber; or**
- (6) lease;**

residential real property that is the subject of the escrow transaction.

SECTION 2. IC 32-29-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period ~~shall be~~ is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk

1 in any county as provided in IC 33-32-3-2. After the period set forth in
2 subsection (a) expires, a person who may enforce the judgment and
3 decree may file a praecipe with the clerk in any county where the
4 judgment and decree is filed, and the clerk shall promptly issue and
5 certify to the sheriff of that county a copy of the judgment and decree
6 under the seal of the court.

7 (c) Upon receiving a certified judgment under subsection (b), the
8 sheriff shall, subject to section 4 of this chapter, sell the mortgaged
9 premises or as much of the mortgaged premises as necessary to satisfy
10 the judgment, interest, and costs at public auction at the office of the
11 sheriff or at another location that is reasonably likely to attract higher
12 competitive bids. The sheriff shall schedule the date and time of the
13 sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m.
14 on any day of the week except Sunday.

15 (d) Before selling mortgaged property, the sheriff must advertise the
16 sale by publication once each week for three (3) successive weeks in a
17 daily or weekly newspaper of general circulation. The sheriff shall
18 publish the advertisement in at least one (1) newspaper published and
19 circulated in each county where the real estate is situated. The first
20 publication shall be made at least thirty (30) days before the date of
21 sale. At the time of placing the first advertisement by publication, the
22 sheriff shall also serve a copy of the written or printed notice of sale
23 upon each owner of the real estate. Service of the written notice shall
24 be made as provided in the Indiana Rules of Trial Procedure governing
25 service of process upon a person. The sheriff shall charge a fee of ten
26 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional
27 owner for service of written notice under this subsection. The fee is:

28 (1) a cost of the proceeding;

29 (2) to be collected as other costs of the proceeding are collected;
30 and

31 (3) to be deposited in the county general fund for appropriation for
32 operating expenses of the sheriff's department.

33 (e) The sheriff also shall post written or printed notices of the sale
34 in at least three (3) public places in each township in which the real
35 estate is situated and at the door of the courthouse of each county in
36 which the real estate is located.

37 (f) If the sheriff is unable to procure the publication of a notice
38 within the county, the sheriff may dispense with publication. ~~However,~~

1 The sheriff shall state that the sheriff was not able to procure the
 2 publication and explain the reason why publication was not possible.

3 (g) Notices under subsections (d) and (e) must contain a statement,
 4 for informational purposes only, of the location of each property by
 5 street address, if any, or other common description of the property other
 6 than legal description. A misstatement in the informational statement
 7 under this subsection does not invalidate an otherwise valid sale.

8 **(h) The sheriff may charge an administrative fee of not more**
 9 **than two hundred dollars (\$200) with respect to a proceeding**
 10 **referred to in subsection (b) for actual costs directly attributable to**
 11 **the administration of the sale under subsection (c). The fee is:**

12 **(1) payable by the person seeking to enforce the judgment and**
 13 **decree; and**

14 **(2) due at the time of filing of the praecipe;**
 15 **under subsection (b).".**

16 Renumber all SECTIONS consecutively.

(Reference is to SB 564 as reprinted February 11, 2005.)

and when so amended that said bill do pass.

Representative Burton